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## Article

# Institutions of collective investment in Ukraine : scale and consequences of investment dysfunction

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## **INSTITUTIONS OF COLLECTIVE INVESTMENT IN UKRAINE: SCALE AND CONSEQUENCES OF INVESTMENT DYSFUNCTION**

*The development of collective investment institutions (CIIs) in Ukraine is characterized by rather ambiguous and stable trends, which at first glance do not have any objective economic basis. The dynamics of CIIs activities in Ukraine demonstrates their steady invulnerability to the crises in the global and national economy, maintaining positions (in quantity terms) against the background of reduced number of both professional stock market participants and other institutional investors, and despite the decrease in the financial instruments in circulation, and the gradual formation in public consciousness of a neutral negative view of the functioning of the national stock market. The authors' assumption that the key to such institutional viability consists in the tax preferences for the CIIs, which is confirmed by the analysis. It is noted that in this case both the economic sense and the declared "collectivity" of this investment institution are distorted.*

*The use of CIIs solely to ease the tax burden, with gross legal and tax violations creates risks for both the beneficiaries of such tax schemes and for the very existence of the institution. The specificity of "investment areas" outside the stock market, the highly conditional performance of the function of accumulation of investment resources and, correspondingly, the profanation of the CIIs' issuer function, in particular as to the fair distribution of investment income, distortions of the essence of the ideology of collective investment in combination with extremely loyal regulation on the part of the NSSMC all presently call into question the entire possibility of considering CIIs as a full-fledged component of the stock market.*

**Keywords:** *stock market, stock exchange, securities, collective investment institutions, investment funds, institutional investors, financial institutions*

It was expected that collective investment institutions in Ukraine should become one of the most important stock market participants, acting at the same time as institutional investors, issuers and financial intermediaries, accumulating financial resources of legal and

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physical persons and managing quite effectively considerable (by Ukrainian standards) investment portfolios.

However, the actual situation in the field of collective investment institutions in Ukraine shows quite ambiguous and stable trends, which at first glance have no objective economic basis. Thus, the dynamics of domestic CIIs demonstrates their invulnerability to crisis phenomena, and their stable positions in terms of their quantity with a simultaneous reduction in the number of both professional stock market participants and other institutional investors, despite a decreased range of financial instruments in circulation.

Some aspects of the phenomenon of Ukrainian collective investment institutions ("quasi-venture" institution) are quite specifically covered in the works by experts [1-3].

However, there is reason to believe [4-6] that the key factor of such institutional viability is the tax preferences of CIIs.

In view of the above, the purpose of the article is to identify the causes of specific trends in the development of Ukraine's CIIs and to clarify the role of tax preferences in the investment dysfunction of this country's CIIs.

### **1. CIIs in Ukraine: features of formation and development**

The emergence of CIIs in Ukraine - like that of most other financial institutions - is closely linked to the privatization, which, on the one hand, laid initial conditions for the development of stock market, and on the other - led to excessive concentration of strategic assets in financial and industrial groups and to limited interest of domestic and foreign investors in any instruments on Ukrainian stock market, other than government's ones.

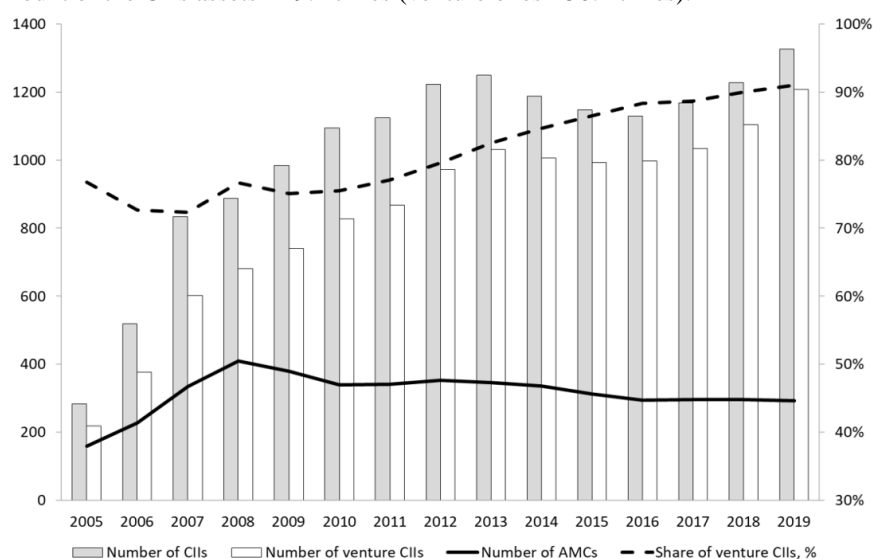
It is exactly to service mass privatization in Ukraine that investment companies and funds were actively created that operated in accordance with the Decree of the President of Ukraine "On Investment Funds and Investment Companies" of 19.02.1994 № 55/94 [7] and initially could attract only privatization property certificates, which were subsequently invested at SPFU auctions. Investment funds were established as CIIs, and investment companies acted as securities traders, which, among other activities, could raise funds for joint investment through the issuance of securities and their placement. Already in 1995, the Ukrainian Investment Business Association (UAIB) was established, which unites members of the collective business industry and has long been considered the most influential SRO (self-regulatory organization) on Ukrainian stock market, in particular due to the greatest powers delegated to it by the NSSMC.

However, in reality, the collective investment industry in Ukraine began to develop dynamically after the adoption of the Law of Ukraine "On Collective Investment Institutions (Unit and Corporate Investment Funds)" of March 15, 2001 № 2299-III. This law initiated the activities of asset management companies (AMCs), which manage the assets of such forms of CIIs organization as corporate investment funds (CIFs, in the form of a joint stock company, with the CIFs' shares owned by investors) and unit investment funds (UIFs – with assets in AMCs' management, accounted for separately from the results of their business activities, and with investors holding investment certificates of unit investment funds). As a result, a detailed classification of CIIs (fixed-term/termless, open-ended/interval/ closed-end types, and diversified/non-diversified types) was developed. In particular, for the first time at the legislative level, the operation of venture funds was stipulated (non-diversified closed-end CIIs performing exclusively private placement of CIIs' securities among legal entities and individuals). Besides, as a result, the CIIs gradually become the main, but not the only, activity of the AMCs, since the AMCs also started to manage the assets of non-state pension funds (2005) and insurance companies (2010).

To take into account the peculiarities in the functioning of CIF compared to ordinary joint stock companies and the emergence of new classification features of the CIIs, the Law of Ukraine of 05.07.2012 № 5080-VI [8] was adopted, which entered into force on 01.01.2014 and is still the main legislation to regulate the CIIs activities. In particular, in addition to diversified and non-diversified, the possibility of creating the following CII types was added: 1) specialised CIIs (to invest assets exclusively in certain categories of assets, which allows to classify them as money market funds, government securities funds, bond funds, equity funds, index funds, or bank metal funds) and 2) qualified CIIs (does not have any requirements for the structure of assets, but invest assets exclusively in funds and one of the qualification classes of assets, such as real estate, rent assets, loan assets, commodity exchange assets, or the combined securities).

Currently, in the context of the implementation of provisions of the Association Agreement between Ukraine and the EU, new changes in the legislation in the field of mutual investment are expected.

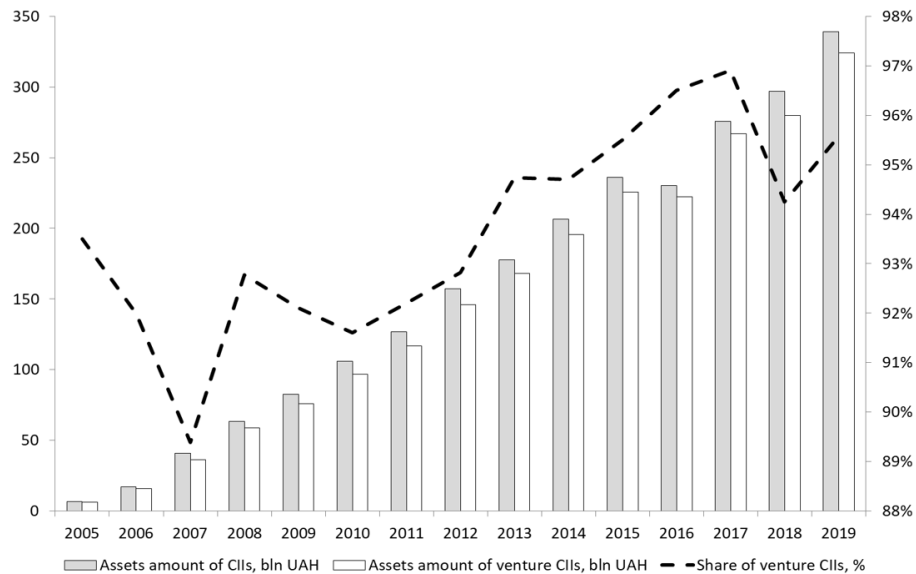
At first glance, the dynamics of the CII industry in Ukraine is quite positive. Except for the periods 2008-2009 and 2014-2015, which are associated with the global financial crisis and the Russian armed aggression against Ukraine, CII performance grew steadily (Fig. 1, 2): during 2005-2019 the number of CIIs increased 4.7 times (venture ones - 5.5 times), and the amount of the CIIs assets - 49.1 times (venture ones - 50.2 times).



**Fig. 1. Number of AMCs and CIIs in Ukraine in 2005-2019**

Source: compiled based on data from NSSMC, and UAIB.

It should be noted that CIIs and AMCs servicing them were the least (compared to other financial institutions) affected by the factors of political and financial instability in recent years and the gradual growth of legal requirements for operations in financial markets. In 2014–2018, the number of operating banks decreased by 53%, and that of insurance companies - by 26%, non-state pension funds (NPFs) - by 24%, securities traders - by 48%, and depository institutions - by 35%; instead, the number of AMCs decreased by only 13% (from 345 to 299), so AMCs became the most numerous category of licensed stock market participants. The number of CIIs during this period decreased only in part of the non-venture funds, while the number of venture CIIs even increased, and the rate of increase in CIIs assets was the largest among Ukrainian financial institutions (Table 1).



**Fig. 2. CII assets in Ukraine in 2005–2019.**

Source: compiled based on data from NSSMC, and UAIB.

*Table 1*

**Number of financial institutions and amount of their assets in Ukraine in 2014–2018**

Financial institutions	Number			Assets amount, bln UAH		
	2014	2018	Change, %	2014	2018	Change, %
Banks	163	77	-52,8	1 316,85	1 359,70	3,3
Total CII	1238	1133	-8,5	207,97	306,09	47,2
– non-venture CII	218	99	-54,6	10,49	16,66	58,8
– venture CII	1020	1034	1,4	197,47	289,43	46,6
Insurance companies	382	281	-26,4	70,26	63,49	-9,6
NPFs	75	57	-24,0	2,47	2,74	10,9

Source: compiled based on data from NSSMC, NBU and National Committee of Financial Services (Natskomfinposluzh).

As of the beginning of 2020, according to UAIB, its members were 293 AMCs, which managed the assets of 1,399 CII, 58 NPFs and two insurance companies; the total value of these assets exceeded 350 billion UAH. Over the last 10 years, CII assets grew 3.2 times, which is twice the growth rate of the assets of Ukrainian banks, so the ratio between CII's and banks' assets in 2010-2019 increased from 11.2 to 22.7%.

Immediately after the emergence of the legal possibility of their creation, venture funds began to dominate the collective investment market, and this trend is only growing – both in number (the share of venture CII in total CII's number increased from 73% in 2006 to 91% in 2019 - Fig. 1) and in assets (the share of venture CII's assets in total CII assets increased from 92% in 2006 to 96% in 2019 - Fig. 2).

The reasons for this are quite obvious - venture funds have the lowest requirements as to their creation and diversification of assets, loans to legal entities can be provided at the expense of venture fund, while the tax regime for them is as attractive as for other CII types.

## 2. Fiscal factors of CII functioning on immature stock market

In the theory and practice of taxation, it is believed that the rules of taxation should adequately reflect both incomes and economic activity as a result of which they arise. To some extent, the existing tax preferences in some cases lead to inadequacy between incomes and profits from economic activities. However, in such cases, the loyalty of the legislation is

justified by social needs and/or the importance of a particular economic activity for societal welfare, national security, etc.

Activities on the management of assets of institutional investors are one of the areas of economic activity for which (in particular, in Ukraine) tax preferences are established. The need to use special approaches to this activity in taxation is due to the special economic and legal nature of the service of the management of institutional investors' assets. Thus, by its nature, management of an institutional investor's assets involves the transfer of some management functions from the direct owner of such assets to the provider of financial services.

In establishing tax exemptions, the domestic legislator considered the following: 1) in the structure of the investment process, the basic element is the motivation and implementation of savings; 2) it is important to ensure advantage or at least tax equality of the service of institutional investors' assets' management over the independent implementation of investments (in the case of voluntary consumption of the service); 3) in the case of forced consumption of asset management services, it is important to reduce the investment risk for the person who invests in assets.

Thus, the main argument in favor of liberal tax regulation of the service of management of institutional investors' assets was a guarantee of the advantages of institutional investing over independent investment, as well as reduction of the negative effect of agency conflicts between the participants of investment process.

The specifics of Ukraine's stock market, together with the underdevelopment of its individual segments significantly narrow the opportunities for the formation of effective portfolios for institutional investors, and reduce the benefits of institutional investment compared to independent investment. Therefore, the CIIs, which mostly have to invest in securities and real estate, have limited potential instruments.

While in the world CIIs significantly diversify their investments by investing in various assets, in Ukraine the opportunities for investing in such traditional types of financial instruments as shares and corporate bonds are significantly complicated due to the small number of reliable (listed) issuances, low liquidity and extremely low turnover on the regulated (exchange) market compared to that of government bonds (IGLBs), see Table 2.

*Table 2*

**Securities types on Ukraine's stock market in 2014–2018**

Type of financial tools	Share in total exchange trades, %			Share in total listing issuances, units		
	2014	2018	Change	2014	2018	Change
Government bonds	88,1	94,2	+6,1	35,2	93,9	+58,6
Shares	3,9	0,5	-3,5	24,4	1,6	-22,7
Corporate bonds	5,3	3,9	-1,3	30,8	4,1	-26,7
Other financial tools	2,7	1,4	-1,3	9,6	0,4	-9,2

*Source:* compiled based on data from NSSMC.

As a result, CIIs' investments in stocks, corporate bonds, local bonds, mortgages and promissory notes significantly declined in recent years. The only direction of CIIs investments in securities, which grew in recent years, were exactly the IGLBs (Table 3).

However, investing through CIIs in IGLBs - as the most common type of investment by many entities - makes no sense (because entities can purchase IGLBs without pooling funds. In addition, individuals who independently buy IGLBs have significant advantages over

investing through CII; at least they do not pay tax on their CII dividends in the case of joint investment.

Table 3

### Value and asset structure of the operating CII in 2014–2018

Asset type	Value, mln UAH			Asset share, %		
	2014	2018	Change, %	2014	2018	Change, %
Shares	34 527,9	17 952,1	-48,0	16,6	5,9	-10,7
Corporate bonds	8 382,1	8 049,9	-4,0	4,0	2,6	-1,4
Local loan bonds	0,8	0,0	-100,0	0,0	0,0	0,0
Government bonds	330,9	763,2	130,6	0,1	0,2	0,1
Promissory notes	16 114,1	9 258,8	-42,5	7,7	3,0	-4,7
Mortgages	21,9	0,5	-97,8	0,0	0,0	0,0
Derivatives	78,0	1 469,3	1782,8	0,0	0,5	0,4
Other investments	37 013,8	78 225,3	111,3	17,8	25,6	7,8
Cash	3 555,7	4 693,9	32,0	1,7	1,5	-0,2
Bank metals	13,4	4,6	-66,1	0,0	0,0	0,0
Real estate	4 423,0	9 357,7	111,6	2,1	3,1	0,9
Receivables	103 504,3	176 310,4	70,3	49,8	57,6	7,8
Total assets	207 965,9	306 085,8	47,2	100,0	100,0	-

Source: compiled based on data from NSSMC.

Actually, gaining more profit from scales for CII should be reduced to investing in real estate or debt. However, it is the specifics of CII taxation themselves that play a stimulating role in the development of their activities.

Venture CII, as well as closed-end CII in 2018 preferred to invest in assets other than securities (about 88%). Open-end CII have a more diversified portfolio, in where the majority are shares (44.8% of assets), deposits (26.0%), IGLBs (21.8%). Interval CII invest 39.8% in IGLBs, and 38.8% - in stocks (Table 4).

Table 4

### Asset value and composition by types of operating CII in 2018

Asset type	Value, mln UAH				Asset share, %			
	Venture	Open-end	Interval	Closed-end	Venture	Open-end	Interval	Closed-end
Shares	16 606,9	33,6	31,9	1 433,7	5,7	44,8	38,8	17,2
Corporate bonds	7 729,9	0,3	0,5	315,1	2,7	0,4	0,6	3,8
Local loan bonds	0,3				0,0	0,0	0,0	0,0
Government bonds	280,2	16,4	32,7	389,9	0,1	21,8	39,8	4,7
Promissory notes	9 202,3			106,8	3,2	0,0	0,0	1,3
Mortgages	0,5				0,0	0,0	0,0	0,0
Derivatives	1 469,3				0,5	0,0	0,0	0,0

*Table 4 (end)*

Other investments	75 621,4		0,1	2 268,4	26,1	0,0	0,2	27,1
Cash	3 474,6	19,5	10,4	1 094,6	1,2	26,0	12,7	13,1
Bank metals		0,8		1,3	0,0	1,0	0,0	0,0
Real estate	9 330,5			17,4	3,2	0,0	0,0	0,2
Receivables	165 709,7	4,5	6,5	2 731,0	57,3	6,0	7,9	32,7
Total assets	289 425,5	75,1	82,1	8 358,3	100,0	100,0	100,0	100,0
Including securities	33 820,0	50,3	65,1	2 245,5	11,7	67,0	79,2	26,9

Source: compiled based on data from NSSMC

It is worth noting that only 3.2% of venture CIIs' assets are invested directly in real estate. However, a NSSMC's analysis of the receivables of venture CIIs in 2018<sup>3</sup>, which account for the largest share of their assets (165.7 billion UAH, 57.3% of assets), shows that the subject of receivables are loans, rights of claim, corporate rights other than securities, etc., i.e. in fact the assets of venture CIIs include the results of operations related primarily to the financing of construction and sale of real estate.

There is no reason to disagree that the use of the widespread in Ukraine characteristic of the CIIs as venture funds is rather misleading [1, 3]. The most attractive areas in which venture funds invest in Ukraine include construction, agricultural processing, food industry, and retail trade, while in the European Union and the United States – they are mostly investment in innovation [2]. To some extent, this is due to significant differences between the structure of Ukraine's economy and that of mature economies of developed countries. In particular, according to the World Bank data<sup>4</sup>, the share of high-tech exports in Ukraine in 2018 was only 5% and during 2016-2018, it tended to decrease, while the world average was 21%.

Venture funds in Ukraine are used mainly to optimize the management of assets of financial and industrial holdings and reduce the tax burden, while globally venture capital remains one of the most important sources of capital for companies whose rapid growth and development constantly require additional foreign investment (usually such companies include small and medium businesses) [2].

Experts rightly point out that Ukrainian venture funds, unlike European funds, are not aimed at investing in innovative projects and high-tech sectors. Analysis of the largest venture funds in terms of asset value and profitability, as well as analysis of the asset management companies of these funds, presented in [2], shows that most of them are used as a tool for joint investment and tax optimization in the construction, financial and agricultural sectors. In this case, the fund itself is the main owner of assets (corporate rights). This mechanism makes it possible to issue loans to the holding's companies, thereby reducing the base of corporate income tax collected from companies that receive loans from venture funds. The main reasons for this are non-transparent and imperfect legislation, limited financing and, consequently, the disadvantage, in such conditions, to make direct "clean" investment in innovation [2, 3].

<sup>3</sup> Annual NSSMC Report for 2018. URL: [https://www.nssmc.gov.ua/wp-content/uploads/2019/08/zvit\\_2018-1.pdf](https://www.nssmc.gov.ua/wp-content/uploads/2019/08/zvit_2018-1.pdf)

<sup>4</sup> High-tech exports (% of manufactured exports) / World Bank. URL: <https://data.worldbank.org/indicator/TX.VAL.TECH.MF.ZS>



According to experts, quite often venture funds in Ukraine are targeted for the assets of one client for the implementation of short-term projects or individual financial schemes. Usually the ultimate beneficiaries, co-owners or affiliated parties of AMC and relevant funds are influential Ukrainian businessmen or PDs.

The popularity of CII in business structuring is commonly explained both by the convenience of managing heterogeneous assets and conducting operations within groups of related companies to implement joint projects, and by the existing favorable tax regime.

As mentioned above, it is exactly because of the peculiarities of CII taxation that these institutions are actively used in the practice of organizing the financing of construction projects. CII are often involved as a real estate operator, including that of residential real estate. Under an investment agreement with a developer, a CII may acquire ownership of a property and consequently rent or sell this property to other entities, thereby generating a profit.

One of the most common options for attracting venture CII to use tax preferences is the scheme of financing construction by concluding investment (or preliminary) agreements, which is generally reduced to this:

The purpose of the scheme is: 1) to raise funds to finance construction before putting the real estate into operation; 2) non-payment of income tax for the construction thanks to the use of the tax benefit provided for in paragraph 141.6.1 of the Tax Code of Ukraine; 3) non-payment of the tax for the income gained as the difference between the sale price and cost.

In the first stage, a certain AMC, in the interests of a certain CIF, concludes an agreement with a developer to invest in construction with the developer's obligation to deliver the real estate object after construction. Also, the AMC in the interests of the CII concludes (1) a contract for investment in the construction of the real estate object with end buyers of the real estate with the CII's obligation to deliver the real estate object upon construction or (2) a preliminary contract of sale of the real estate object with the end buyer of the real estate with the CII's obligation to conclude the main contract upon construction. The amounts of investment payments under the contracts with the end buyers (amounts under preliminary contracts) should be close to the cost of construction. And the funds accumulated in this way are given to the developer to finance the construction.

In the second stage, upon construction, the real estate object is delivered to end buyers (consumers) under real estate purchase and sale contracts (the main contract in the case of the scheme with preliminary contracts). At this stage, there is a "surcharge" of the real estate's value in the amount corresponding to the profit from the real estate's construction.

It is clear that there is an agreement (conspiracy if such actions are considered criminal) between officials and/or the developer's beneficiaries and AMC (CII) officials to implement such a scheme of construction financing. Evidence in this favor includes: 1) the conclusion of contracts by end buyers of the real estate object exclusively with a certain AMC(s) in the interests of a certain CII(s) in the sales offices of the developer; 2) the developer has no other mechanisms for selling the real estate, for example, because participation of CII is necessary; 3) the existence of the contract between the CII (AMC) and the developer to invest in construction.

It follows from the above that the participants in the scheme are trying to achieve their goal in a seemingly legal way using of tax exemptions provided for venture funds.

In 2019, the tax authorities often inspected the CII, because, in accordance with the provisions of paragraph 141.6.1 of the TCU [11], funds of collective investment institutions are exempt from taxation (including income from CII activities), and developers use CII via multi-level schemes to attract financing. Since construction requires significant financial investment, the taxation effect of tax audits reaches tens or even hundreds of millions UAH [12]. Attention to CII was also

sharpened by the NSSMC when on February 20, 2019 on its official website a warning was published about investing in real estate by buying forward contracts, noting, among other things, possible negative tax consequences of such agreements [12].

Presently, the legal practice on the validity of such warnings and the grounds for additional accruals of CII tax liabilities is insignificant and ambiguous.

However, the current legislation (on investment activities, on CIIs and on financial services and state regulation of the financial services market) gives grounds to conclude that attracting CII funds from persons who are not CII members, based on investment contracts or purchase and sale contracts (including preliminary ones), by economic and legal nature is not a case of joint investment activity. That is, such activity should be considered a prohibited activity, as professional stock market participants cannot combine it with other activities.

Investment contracts or purchase and sale contracts (including preliminary ones) related to real estate under construction, which are currently concluded by CIIs, by economic content and - accordingly - legal nature, regardless of the contract name are transactions on equity participation in construction<sup>5</sup>. The participation of CIIs in the "investment organization" under such a scheme should be considered contrived and purely formal and is carried out solely to take advantage of tax benefits. It is precisely for the purpose of institutional streamlining of investment activities in real estate construction and avoidance of developers' abuse in raising funds through equity participation in construction, that the Law of Ukraine of 15.12.2005 "On investment activity", Art. 4, was supplemented by part three, according to which the use of such a construction financing mechanism was terminated and it was established that investment and funding of housing construction can be carried out only via construction financing funds, real estate funds, and collective investment institutions, as well as via the issuance of target oriented corporate bonds, fulfillment of obligations under which is carried out by delivering the real estate object (part of the real estate object) of housing construction to the buyer.

At the same time, this law explicitly established that "... Other ways of funding the construction of such facilities are determined exclusively by law." Presently, there are no such "other" methods defined "exclusively by law".

Therefore, we must state that no mechanism of financing housing construction by concluding investment or purchase contracts with end consumers is currently provided by law. The fact of organizing such financing schemes with the use of CIIs does not serve as evidence of the legitimacy of such investment, since it is not carried out in accordance with the special legislation governing the CII activities. Moreover, the use of these schemes leads to violation of such Laws of Ukraine as "On Investment Activities", "On Collective Investment Institutions", "On Securities and Stock Market" and a few more.

The literal harmonization of the TCU and the legislation on CIIs as to defining the term and concept of "collective investment funds" and providing tax benefits precisely to those incomes that are earned from assets generated by collective investment funds emphasizes that CIIs are not "universal tax-free institutions", and the tax exemption regime is of a limited and specialized nature. This is also emphasized in the Supreme Court's ruling of June 26,

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<sup>5</sup> Since the agents of investment activities can act as depositors, creditors, buyers, as well as perform the functions of any participant of investment activities, investment activities may be mediated by contracts of different legal nature. In this case, we mean contracts such as those through which developers organized construction financing before 2006 and which provided opportunities for numerous abuses in the construction financing process, which, in fact, was the reason for their prohibition and introduction of corresponding amendments to the Law of Ukraine "On Investment activities".

2018 on case № 825/1830/17: the TCU does not contain provisions that exempt CIIs from income tax, but only provides for the exemption from taxation of joint investment funds [12].

The status of funds received by CIIs from their investor counterparties under investment or purchase contracts in any of the above-described schemes cannot in any way be considered as collective investment funds, as such investors did not purchase CII securities and did not become CII participants.

At the same time, such funds are not incomes from transactions with CII assets (because no alienation occurs, since the thing that is the subject of the contract, and, accordingly, the rights to it do not yet exist) or other incomes from the use of CII assets. Such funds will only become income in the sense of tax and accounting legislation after the alienation of the newly created asset.

But even after the newly built object acquires the status of real estate (i.e. the emergence of the thing), the income from its alienation can be considered as collective investment funds only if such CII's asset is created at the expense of collective investment funds. Given the scant capital of virtually all CIIs who use the above scheme, compared with the funds required for construction, the probability of this is merely hypothetical.

Based on the above, we must state that the funds received by CIIs under such agreements (schemes) are acquired contrary to current law and are not collective investment funds at any stage of the above mentioned scheme (implementation of above mentioned agreements).

Thus, despite the growing regulatory burden on stock market participants, CIIs currently generate considerable legal and tax risks for the Ukrainian real estate market. This is partly due to the fact that, for some reason, there are very few effective regulatory tools for the CII market. AMC's accounting on CIIs in management seems detailed only at first glance. The actual structure of CII assets is practically not revealed (this can be traced at least based on the dominant asset - receivables, see Table 4, while real investment preferences are not disclosed). Of course, some additional information can be obtained through detailed reporting by securities traders (STs), but the general trends to avoid investing in securities minimizes that information. In particular, the conclusion by AMCs, in the interests of CIIs, of investment or preliminary contracts does not require the STs involvement, so the related information will not be part of the STs' accounting. However, even if the regulator had such information, it is unlikely to change anything fundamentally in the existing legal situation: on the one hand, such transactions are not naturally within the regulator's competence, on the other hand, the detection of such transactions within the regulator's control over the AMCs and CIIs activities have not yet become a subject of the NSSMC's close attention.

### **3. CII investment dysfunction: scale and consequences**

In the economic system, the CIIs should perform a series of functions, but the efficiency of their performance in Ukraine raises reasonable doubts.

First, CIIs really accumulated (attracted) a significant amount of investors' funds, which is second only to the amount of bank borrowings. This, among other things, saves on the scale of operations, because as the CII assets grow, there are more and more opportunities to reduce the cost of financial transactions. However, in Ukraine such an economy is largely reduced, for the following reasons: 1) the largest transaction costs are related to the services provided by clearing and settlement agents, and for different categories of investors these costs are almost unchanged; 2) the market is distributed between over 1.3 thousand CIIs, so the size of assets of an average non-venture CII is up to 5 million USD (average size of assets of a venture one - up to 10 million USD), which due to the requirements for asset diversification turns individual CIIs into small investors; and 3) usually AMCs serve a small number of CIIs, which also reduces the scope for savings, although there is a retrospectively

noticeable increase in the ratio of CIIs and AMCs (on average from one CII per one AMC in 2002-2004 to four per one in 2017-2019). Besides, the CIIs should hardly be considered a real mechanism for attracting the households' financial resources, if, according to the UAIB, among the participants of venture funds as of the end of 2019 there are only 772 resident individuals, which is less than the number of registered venture funds (1207). Conversely, among the participants in 19 open-end CIIs, there are 1,622 individuals who, together with other owners, only possess 3 million USD worth of assets.

Secondly, CIIs have the opportunity to professionally select investment targets, and diversify their assets. However, in Ukrainian conditions, significant requirements for diversification often lead to lack of profitability or even loss-making, as diversified CIIs are forced to invest even in clearly unprofitable or illiquid assets, just to meet the asset-structure requirements. Conversely, venture CIIs, in the absence of regulatory constraints, as mentioned above, invest in tools with a very are contingent relation to the stock market, and it is not about financing innovation, but about hardly legal transactions. In fact, the demand for both diversification and specialization of assets is almost absent: although the possibility of creating specialized and qualified CIIs has been regulated by law since 2014, there are only a few examples of such funds.

Third, AMCs and CIIs, like most other financial institutions, have an uneven regional concentration: in 2019, the share of CII registered in Kyiv and Kyiv oblast in the total number of CIIs reached 72%, and in the total CIIs' - 80%. Thus, the regional transformation of capital with the participation of CIIs is extremely limited.

Fourth, the problem of liquidity of investors' investments in CIIs is not solved. Circulation of securities issued by the CIIs (CIF shares and MIF investment certificates) is extremely limited (0.29 billion UAH, or 0.1% of trading volume on the stock exchanges in 2018).

Fifth, the CIIs do not demonstrate a sufficient level of profitability and risk reduction to become attractive for individual investors. Certainly, it is necessary to take into account the crisis processes in Ukraine's economy in 2014-2015, but it is still noticeable (Table 5) that even on average in 2015-2019, and after the beginning of macro-financial stabilization, the

*Table 5*

**Yield of CIIs and other forms (tools) of investment in Ukraine in 2015–2019, %**

Tools	2015	2016	2017	2018	2019	Period average
Deposits in UAH	23,0	22,1	16,9	15,0	17,1	18,8
Deposits in US dollars	68,9	21,2	10,4	-0,2	-11,9	17,7
Deposits in euros	47,9	14,6	24,0	-4,4	-15,3	13,4
"Golden" deposits	38,9	22,7	21,5	-1,5	5,0	17,3
PFTS stock index	-37,8	10,2	18,8	77,5	-8,9	12,0
UX stock index	-33,6	16,0	71,3	25,1	-10,9	13,6
Inflation (consumer price index)	24,9	12,4	13,7	9,8	4,1	12,9
Real estate in Kiev (in UAH)	24,9	0,5	-0,6	0,4	-4,1	4,2
Open CIIs	-4,1	14,0	27,3	9,0	-0,9	9,1
Interval CIIs	0,7	-6,2	6,7	6,4	-4,3	0,7
Other (diversified, specialized) funds with public issuance	5,3	-12,1	11,9	13,4	-2,6	3,2
Closed CIIs with private issuance	2,0	2,6	5,9	-0,8	6,7	3,3
Closed CIIs with public issuance	17,3	5,4	21,2	-4,5	-4,2	7,1
Equity funds	-10,0	15,0	30,1	14,1	-11,9	7,5
Mixed investment funds	-2,6	-2,8	12,1	4,4	-1,8	1,9
Bond funds	25,4	15,0	12,3	6,7	6,1	13,1

Source: compiled based on data from UAIB, NBU, and stock exchanges.

CII's yield (except for the venture CII's whose summarized information is not published) was comparable to the yield on investment in real estate, but significantly lower than the yield on investments in deposits, inflation and stock indices (for all their conventionality). At the same time, against the background of other non-venture CII's, bond funds stand out, which provided a yield comparable to the yield on euro deposits, inflation and stock indices, although slightly lower than hryvnia, dollar and gold deposits. Thus, the question arises again about the advisability of the investments made by individual investors in the CII's, if the yield of independent investments in deposits or bonds may appear to be much higher.

Thus, despite significant gains, the positive dynamics (at least compared to other financial institutions) and the large scale of the industry of collective investment, and the performance of the CII's investment function do not seem sufficiently high relative to the existing fiscal incentives, especially in the context of large-scale infringements of law and systematic participation in illegal schemes. Attempts to deprive the CII's of their tax exemptions have been observed more than once, but so far, they have not been successful. However, the sector's further "development" in this direction will inevitably refute the arguments of the apologists of tax incentives for CII's.

### Conclusions

Thus, opportunities for investing in traditional types of financial instruments (shares and corporate bonds) for the CII's are significantly complicated due to the small number of reliable (listed) issuances, low liquidity and extremely insignificant turnover in the regulated (exchange) market compared to government bonds (IGLBs). Therefore, the assets of domestic CII's are not sufficiently diversified, while the features of the financial instruments, which are dominating the market, do not create any significant advantages for institutional investment relative to independent investment by individual investors.

The CII sector is definitely dominated by venture CII's, whose investments have little in common with stock instruments, whose ownership of securities is not active, but rather purely formal, and whose main goal is to participate in numerous schemes (financing models) aimed at taking advantage of tax exemptions to minimize the costs incurred by wide circles of economic agents, primarily in the field of construction.

Therefore, the expediency of the existing preferences established for the CII's raises objective doubts due to the rather specific current general situation with mutual investment and stock market in Ukraine, which gives no sign of sufficient effectiveness of such fiscal incentives. The scheme of financing housing construction by raising funds via investment contracts other than securities is not in fact a stock market activity, hence it is prohibited for professional stock market participants, such as asset management companies of institutional investors. Moreover, in this case, venture funds do not at all pursue the goal of collective investment, but only participate in illegal financial schemes in order to evade taxes.

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## **ІНСТИТУТИ СПІЛЬНОГО ІНВЕСТИВАННЯ В УКРАЇНІ: МАСШТАБИ І НАСЛІДКИ ІНВЕСТИЦІЙНОЇ ДИСФУНКЦІЇ**

*Розвиток інститутів спільного інвестування (ІСІ) в Україні характеризується досить неоднозначними та стійкими тенденціями, які на перший погляд не мають об'єктивного економічного підґрунтя. Динаміка діяльності ІСІ в Україні демонструє їх стійку невразливість до кризових явищ у світовій та національній економіці, збереження*

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позицій за кількістю на тлі зменшення складу як професійних учасників фондового ринку, так і інших інституційних інвесторів, попри звуження кола фінансових інструментів в обігу, поступове формування у суспільній свідомості нейтрально негативного погляду щодо функціонування національного фондового ринку. Зроблено припущення, що запорукою такої інституційної життєздатності є податкові преференції ICI – і це отримало підтвердження за результатами аналізу. Зауважено, що у цьому випадку спотворюються як економічний сенс, так і задекларована "спільність" цього інвестиційного інституту.

Використання ICI виключно з метою зниження податкового навантаження, з грубими правовими та податковими порушеннями створює ризики як для бенефіціарів таких податкових схем, так і для існування цього інституту взагалі. Специфічність "напрямів інвестування" поза сферою фондового ринку, вкрай умовне виконання функції акумулювання інвестиційних ресурсів та, відповідно, профанація функцій ICI як емітента, у т.ч. щодо справедливого розподілу інвестиційних доходів; спотворення суті ідеології спільного інвестування у поєднанні з надто лояльним регулюванням з боку НКЦПФР на нинішньому етапі взагалі ставлять під сумнів можливість розглядати ICI як повноцінну складову фондового ринку.

**Ключові слова:** фондовий ринок, фондова біржа, цінні папери, інститути спільного інвестування, інвестиційні фонди, інституційні інвестори, фінансові інститути